

**Appl. No.** : 09/859,651  
**Filed** : May 17, 2001

### **REMARKS**

Claims 54 and 59 have been cancelled with this amendment. Claims 53, 55, 58, and 60 have been amended. Claims 41-47, 49-53, 55-58, and 60-64 are now pending in this application. Support for the amendments is found in the cancelled claims. Accordingly, the amendments do not constitute the addition of new matter. Applicant respectfully requests the entry of the amendments and reconsideration of the application in view of the amendments and the following remarks.

#### **Rejection under 35 U.S.C. § 112, second paragraph**

Claims 53-62 are rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Examiner points out that it is unclear how the cells of claims 53 and 58 can be cultured at a temperature of less than 32 °C to delay lysis and permit the production of the biologically active protein in the absence of a temperature-sensitive mutation. The Examiner kindly suggests incorporation of the limitation of claims 54 and 59 into claims 53 and 58, respectively. The claims have been amended as suggested by the Examiner. Consequently, this ground of rejection may be withdrawn.

#### **Allowability of claims 41-47, 49-52, 63 and 64**

The Examiner's indication of allowability of claims 41-47, 49-52, 63 and 64 is gratefully acknowledged.

### **CONCLUSION**

In view of Applicants' amendments to the claims and the foregoing Remarks, it is respectfully submitted that the present application is in condition for allowance. Should the Examiner have any remaining concerns which might prevent the prompt allowance of the application, the Examiner is respectfully invited to contact the undersigned at the telephone number appearing below.

Appl. No. : 09/859,651  
Filed : May 17, 2001

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: Nov. 5, 2003

By: Che S. Chereskin  
Che Swyden Chereskin, Ph.D.  
Registration No. 41,466  
Agent of Record  
Customer No. 20,995  
(949) 760-0404

H:\DOCS\CSC\PHAGE\001DVI\PHAGE001DVI\_FINAL.DOC  
102903